IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 261 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SORABJI DERABJI VESUNA

Versus

NANJIBHAI JIRABHAI UMARIGAR

Appearance:

1. Appeal from Order No. 261 of 2001

MR CL SONI for Petitioner No. 1-8

MS KJ BRAHMBHATT for Respondent No. 1-6

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 28/08/2001

ORAL JUDGEMENT

#. Today, Civil Application is fixed for hearing, but later on it was agreed by both the learned counsel for the parties to dispose of the main Appeal from Order finally. Therefore, this Appeal from Order is decided

today.

#. The appellants (original defendants) have challenged in this Appeal the impugned order dated 18-5-2001 passed by the Third Joint Civil Judge (S.D.), Surat below Application Ex.5 filed by the respondents (original plaintiffs) in Special Civil Suit No.151/2001, whereby the learned Judge granted Application Ex.5 and directed the parties to maintain status quo granted earlier on 9-4-2001 till the final disposal of the suit.

#. Before filing the aforesaid suit, the respondents (original plaintiffs) filed Special Civil Application No.1717/2001 before this Court, praying that the order passed by the Mamlatdar, Choryasi on 30-5-1994 in Case No.1/94 (filed by the present appellant no.1) and the subsequent order passed by the Deputy Collector, Choryasi Prant, Surat on 30-10-1999 dismissing the Revision Petition No.4/94 (filed by the present appellant nos.2 to 8) be declared bad in law and illegal and they may be quashed and set aside.

#. Shri CL Soni, who is appearing in this Appeal for the appellants had earlier appeared for the present opponent no.1 Sorabji, who was the respondent in that petition. Order dated 3-4-2001 passed by the learned Single Judge of this Court is produced on record, which shows that after arguing the matter at length, Mrs.Ketty Mehta, learned counsel appearing for the petitioners of that writ petition sought permission to withdraw the petition with a view to file suit. Therefore, permission was granted to withdraw that petition, and accordingly it was disposed of as withdrawn and the ad interim relief granted earlier stood vacated.

#. It appears, that after the withdrawal of the writ petition, the respondents (plaintiffs) filed Special Civil Suit No.151/2001 before the Court of Civil Judge (S.D.), Surat alongwith an application Ex.5 and obtained ex parte stay on 9-4-2001 though there was caveat by the present appellants. The said injunction was made absolute after hearing both the sides by the learned trial Judge by an order dated 18-5-2001. The same is challenged in this Appeal.

#. Learned counsel Shri Soni for the appellants vehemently submitted that the respondents (plaintiffs) deliberately not brought to the notice of the trial Court about the filing of the writ petition and its withdrawal in the plaint filed by them, and the said fact was brought to the notice of the trial Court by the

defendants in their reply. It is true that for the reasons best known to them, the original plaintiffs have not stated this fact in their plaint filed before the Civil Court after withdrawing the writ petition from this Court. However, in my considered opinion, it would not make much difference in the matter, because they were granted permission to withdraw the petition with a view to file suit, and more particularly, when the defendants were also appearing before the Civil Court by way of caveat. Thus, the submission of Shri Soni that as the plaintiffs have not come before the Court with clean hands, therefore, they were not entitled for interim order has no substance and accordingly it is rejected.

#. However, there is a lot of substance in the second submission made by Shri Soni that once the Revenue Court (i.e. Mamlatdar) passed an order which has been confirmed in revision by the Revisional Authority, then in a suit, Civil Court should not have granted atleast interim injunction. In support of his submission, he has placed reliance upon sec.22 of the Mamlatdar's Courts Act. Having carefully gone through the impugned order passed by the learned Judge, it appears that without any concrete material on record, the learned Judge has jumped to the conclusion that there was collusion between defendant no.1 and defendant nos.2 to 7. Unfortunately, the learned Judge has not at all given any importance to the judicial orders passed by the Revenue Courts (i.e. Mamlatdar) and the Revisional Authority. In Revenue matters, the orders passed by the Revenue Courts are to be respected. However, it was vehemently submitted by the Senior Counsel Mrs.Mehta, that in collusion the defendant no.1 and defendant nos.2 to 7 obtained orders from the Mamlatdar and the Revisional Court. This submission of Mrs.Mehta can not be accepted for the simple reason that before execution of sale-deed by the defendant nos.2 to 7 in favour of the plaintiffs, the suit was already filed by the original defendant no.1.

#. Mrs.Mehta then submitted that, after the sale deed was executed in their favour, the plaintiffs have put up the gate on the plot in question and they are cultivating the land where there is standing crop, therefore, if the injunction granted by the trial Court is vacated then that will cause irreparable loss to them. Gate was there or not at the time of execution of sale deed has to be decided. However, at the cost of repeatation, I may state that when the Revenue Authorities have found that there was a way then it has to be kept open. It is true that presently there may be standing crop, but a care may be taken of it by observing that the plaintiffs may be

allowed to take the crop and thereafter, they may keep the way open till the final disposal of the suit.

#. In view of the above discussions, this Appeal is allowed and the impugned order dated 18-5-2001 passed by the learned Third Joint Civil Judge (S.D.), Surat below Application Ex.5 filed in Special Civil Suit No.151/2001 confirming the earlier ex parte order of status quo dated 9-4-2001 is hereby quashed and set aside and the application filed by the respondents (original plaintiffs) is hereby dismissed with no order as to cost.

##. At this stage, an unusual request is made by Mrs.Mehta for the respondents to continue the status quo for a period of six weeks. When no status quo was granted by this Court, then there is no question of continuing the same for a period of six weeks, hence, the request is rejected.

August 28, 2001. (B.J. Shethna, J.)

/sakkaf